

In the Matter of the

Report No. NCD-2509

Dated: March 2, 2016

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of the

**Wireline Competition Bureau Copper
Retirement Network Change Notification
Filed by Verizon New York Inc. in
Connection with Facilities at the W 36th
Street, NY Wire Center (NYCMNY36) –
230 W 36th Street, New York, NY 10018**

WC Docket No. 16-40

Report No. NCD-2509

**OPPOSITION OF TRANSBEAM INC.
TO COPPER RETIREMENT NETWORK CHANGE NOTIFICATION
FILED BY VERIZON NEW YORK INC.**

Pursuant to the Public Notice issued on February 18, 2016 in the above-captioned proceeding, Transbeam Inc. (“Transbeam”) hereby objects to the Verizon New York Inc. (“Verizon”) copper retirement network change notification (“Verizon Notification”) associated with the West 36th Street Wire Center in New York City (NYCMNY36). Under the Verizon Notification, Verizon seeks to retire copper facilities currently used by Transbeam as a wholesale input to provide telecommunications services to end-users. For certain of these services (namely, Ethernet-over-Copper, or EoC, service), Verizon has indicated that there will be no replacement service following the retirement, because the fiber alternatives that Verizon has offered will not support the EoC service that Transbeam currently provides to customers over Verizon’s copper facilities.

Notably, Verizon’s Notification was filed with the Federal Communications Commission (“Commission”) approximately one week before the much-anticipated release of the Commission’s *Technology Transitions* Report and Order (“*Technology Transitions Order*”),

which imposed new rules governing ILEC discontinuance of TDM-based services used as wholesale inputs.¹ Specifically, the *Technology Transitions Order* required, on an interim basis, that ILECs seeking to “discontinu[e], reduc[e], or impair[] a TDM-based special access or commercial wholesale platform service...that is currently used as a wholesale input by competitive carriers must as a condition to obtaining discontinuance authority provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions.”²

Here, Verizon has not committed to providing Transbeam with reasonably comparable wholesale access following the copper retirement described in the Verizon Notification. Rather, Verizon has indicated that its fiber alternatives will not support the EoC service that Transbeam currently provides to customers using the Verizon copper facilities that Verizon seeks to discontinue. Thus, unless Verizon commits to providing Transbeam with access to a suitable fiber replacement following the copper retirement on reasonably comparable rates, terms and conditions, the Verizon Notification must be deemed to be an improper attempt to use the copper retirement notice process to discontinue wholesale services to Transbeam without providing access to a reasonably comparable substitute.

The Commission should therefore reject the Verizon Notification and direct Verizon to seek approval of its requested discontinuance under Section 214, rather than attempting to utilize the outmoded notice procedure under Section 51.333 of the Commission’s Rules. Should the Commission not reject this rather obvious attempt by Verizon to avoid the Commission’s current

¹ *In the Matter of Technology Transitions; Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 30 FCC Rcd. 9372, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, ¶¶ 131 *et seq.* (rel. Aug. 7, 2015) [hereinafter “*Technology Transitions Order*”].

² *Id.* at ¶ 132; *see also* 47 C.F.R. § 63.71 (codifying the interim rule).

legal requirements, the Commission should at least, pursuant to Section 51.333(c) of the Commission's Rules, extend the time for implementation of the facility retirement to permit Transbeam to accommodate the retirement.³ Such action is consistent with the Commission's clear policy objectives and mandates, and is needed to ensure that Verizon appropriately complies with Commission rules adopted to preserve the benefits of competition and to ensure that customers of Transbeam's EoC services do not lose services as a result of Verizon's proposed retirement.

I. Background

Transbeam is a nationwide managed service provider of MPLS, Ethernet, hosted voice, 4G/LTE wireless backup, cloud, call center solution and real-time network monitoring services. Transbeam specializes in data and transport redundancy for business subscribers, which it provides using a range of different platforms including EoC, fiber, and MPLS/VPLS. Transbeam's core network was built in New York City and the surrounding East coast region and has grown nationwide due to customer demand and company expansion.

Transbeam provides EoC to its customers through access to ILEC copper facilities, and currently has 57 EoC subscribers at the locations impacted by the Verizon Notification. To deliver EoC service, Transbeam accesses copper loops from Verizon on an unbundled basis under an Interconnection Agreement and wholesale arrangements, connects the copper loops to Transbeam's Central Offices and bundles together the components necessary to provide the service. Thus, if Verizon is permitted to retire these copper facilities without providing Transbeam reasonably comparable wholesale access, dozens of Transbeam business customers will lose their EoC service.

³ The Verizon Notification was issued just days before the Commission's much-anticipated adoption of the *Technology Transitions Order*.

While Verizon has provided a fiber-based alternative to Transbeam's TDM-POTS customers at the locations affected by the Verizon Notification, that alternative cannot be used to deliver Ethernet service to Transbeam's EoC customers. Under the replacement offered for TDM POTS lines, Verizon provides digital Internet lines that deliver voice services over Verizon's fiber network (or E-POTS) – which lines cannot be connected to Transbeam's Central Offices. As such, this alternative cannot be used by Transbeam to deliver EoC service. Instead, Transbeam requires a suitable fiber replacement that can be connected to Transbeam's aggregating equipment in Transbeam's Central Offices and then bundled together with other components to deliver Ethernet services.

Unlike other situations where EoC was affected by a copper retirement,⁴ Verizon has not indicated or committed that such a fiber alternative will be available to Transbeam as a replacement for EoC services following the retirement. In fact, Verizon has here indicated that there is no replacement service for EoC over fiber. Thus, it is Transbeam's understanding that the copper retirement proposed in the Verizon Notification will result in the discontinuance of the EoC services currently provided by Transbeam to many customers in midtown Manhattan.

II. Since Verizon's Proposed Retirement Will Result in the Discontinuance of EoC Service, the Commission Should Reject the Verizon Notification and Require Verizon to File a Section 214 Application for Discontinuance

The *Technology Transitions Order* prohibits an ILEC from using the network change disclosure process under Section 51.329 of the Commission's Rules, which Verizon seeks to use here, if the change in facilities will result in a discontinuance, reduction or impairment of service. Specifically, the Commission explained as follows:

⁴ For example, Verizon offered Verizon Optical Networking/Ethernet Private Line to carriers as a replacement for EoC services as a result of copper that was retired following Hurricane Sandy.

If [a] change in facilities does not result in a discontinuance, reduction, or impairment of service, then the carrier need not file an application under section 214(a) seeking Commission authorization for the planned network change. Rather, it must only provide notice in compliance with the Commission's network change disclosure rules. However, some changes in network facilities can result in a discontinuance, reduction, or impairment of service for which Commission authorization is needed. For instance, in one prominent example, Verizon filed an application under section 214(a) when it sought to replace the copper network serving Fire Island that was damaged by Superstorm Sandy with a wireless network over which it would provide its VoiceLink wireless service. We expect all carriers to consider carefully whether a proposed copper will be accompanied by or be the cause of a discontinuance, reduction, or impairment of service provided over that copper such that they must file a [Section 214] discontinuance application pursuant to section 63.71 of our rules.⁵

Further, the *Technology Transitions Order* establishes an interim rule providing that “incumbent LECs that seek section 214 authority prior to the resolution of the special access proceeding to transition to all-IP by discontinuing, reducing, or impairing a TDM-based special access or commercial wholesale platform service...that is currently used as a wholesale input by competitive carriers must as a condition to obtaining discontinuance authority provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions.”⁶ This rule is currently in effect and codified under Section 63.71 of the Commission's Rules, 47 C.F.R. § 63.71.

Here, given that Verizon has indicated that the fiber alternatives it has offered will not support EoC service, the retirement of copper to the locations specified in the Verizon Notification will result in a discontinuance of the EoC service to which Transbeam customers subscribe. As

⁵ *Technology Transitions Report and Order*, at ¶ 14 (*emphasis added*).

⁶ *Id.* at ¶ 132. “[T]he reasonably comparable wholesale access condition applies to two categories of service: (1) special access services at DS1 speed and above; and (2) commercial wholesale platform services such as AT&T's Local Service Complete and Verizon's Wholesale Advantage.” *Id.*

noted, Transbeam provides EoC service by accessing TDM-based services from Verizon as a wholesale input. Verizon is therefore obligated, under the interim rule adopted by the *Technology Transitions Order*, to file a Section 214 application to discontinue the affected services and commit to providing Transbeam with reasonably comparable access to facilities on reasonably comparable rates, terms, and conditions.

Allowing Verizon to circumvent this requirement through a network change notification would undermine the Commission's policy objectives and public interest goals,⁷ including promoting competition and fostering the availability of broadband services to enterprise customers through fiber-alternatives such as EoC.⁸ Indeed, the Commission specifically stated that the amended rules are designed to “*avoid the situation where a competitive LEC may irrevocably lose business as a result of the technology transitions and loss of wholesale inputs even though such wholesale inputs may ultimately be made available as a result of the special access proceeding.*”⁹ Verizon's attempt to retire these facilities using the network change notification

⁷ The New Jersey Division of Rate Counsel has similarly noted the impropriety of a recent attempt by Verizon (as Verizon New Jersey, Inc.) to retire copper facilities through the network change notification process, rather than the Section 214 process, where the retirement will result in a discontinuance of service. *See* Opposition Comments of the New Jersey Division of Rate Counsel to the Short-Term Notice Filed by Verizon New Jersey, Inc. on Its Copper Retirement Network Changes in New Jersey and Petition for Review and Reconsideration, WC Docket No. 16-33, Report No. NCD-2466 (dated Feb. 24, 2016).

⁸ *Technology Transitions Report and Order*, at ¶¶ 134-35 (“Competitive LECs are the primary source of competition for wireline communications services purchased by enterprise customers, including government, healthcare, schools, and libraries. COMPTTEL explains that Ethernet over Copper (EoC) services built using DS1s and DS3s as wholesale inputs allow small and medium-sized businesses to realize many of the same efficiencies of Ethernet technology that previously only were available to larger enterprise customers. Moreover, XO states that it currently provides EoC from over 565 local serving offices and to approximately 953,000 buildings. The continued existence of these competitive options enhances the ability of enterprise customers to choose the most cost-effective option for their business or organization.”) (*emphasis added*).

⁹ *Id.* at ¶ 135.

process should therefore be rejected as inconsistent with the Commission's Rules and Orders, and policies, and Verizon should be directed to file a discontinuance application pursuant to Section 214 and Section 63.71 of the Commission's Rules.

III. The Commission Should At Least Provide Appropriate Accommodation to Transbeam for the Retirement Pursuant to Section 51.333 of the Commission's Rules

The Public Notice issued in this proceeding permits objections to the Verizon Notification to be filed pursuant to Section 51.333 of the Commission's Rules. While the *Technology Transitions Order* revised the rules concerning the process for objecting to copper retirement notifications in favor of the rules described in Section II, *supra*, Transbeam also objects to the Verizon Notification pursuant to the former rules to the extent that such former rules are deemed to apply here. In support of this objection, Transbeam demonstrates below, and through the attached affidavit, the required elements of an objection:

(1) Specific reasons why Transbeam cannot accommodate Verizon's changes

The changes proposed in the Verizon Notification cannot be accommodated by Transbeam, because Verizon has not provided Transbeam with a suitable alternative service to accommodate Transbeam's current customers that subscribe to EoC. As discussed above, Transbeam currently has 57 EoC customers that will be directly impacted by the copper retirements proposed in the Verizon Notification.

To deliver EoC service, Transbeam procures copper loops from Verizon under an Interconnection Agreement and wholesale arrangements and connects the loops to Transbeam's Central Offices and bundles them together with other components. Since Transbeam requires access to copper to provide EoC service, Transbeam cannot accommodate Verizon's proposed changes if the copper is retired without a suitable alternative. The replacement offered by Verizon so far only provides an alternative to TDM POTS lines, where Verizon provides digital Internet

lines (which do not connect to Transbeam's Central Offices) delivered over Verizon's fiber network (E-POTS). These lines cannot be used by Transbeam to deliver EoC service. To accommodate this change, Transbeam requires a suitable facility or fiber replacement that can be connected to Transbeam's aggregating equipment in Transbeam's Central Offices and then bundled together to deliver Ethernet services.

(2) Steps Transbeam is taking to accommodate Verizon's changes on an expedited basis

Transbeam has been working with Verizon to migrate Transbeam's TDM POTS customers affected by Verizon's copper retirement to Verizon's digital infrastructure. To this end, Transbeam has worked with Verizon Project Managers to migrate about 80 TDM POTS customers to fiber-based services to date. Verizon, however, has not offered a suitable replacement for Transbeam's EoC platform.

(3) Earliest possible date by which the objector anticipates that it can accommodate Verizon's changes

The date on which Transbeam can accommodate Verizon's changes depends upon when Verizon can provide Transbeam with a suitable replacement facility for the EoC services. While it is difficult to anticipate the length of time it would take for Transbeam to migrate its EoC customers to a replacement service, Transbeam estimates (based on the timeframe for the TDM-POTS to E-POTS migration) that it would take approximately six months from the date on which a suitable replacement is made available.

IV. Conclusion

WHEREFORE, the Commission is respectfully requested to issue an order rejecting the Verizon Notification issued under outmoded notice procedures and directing Verizon to seek approval of its requested discontinuance under Section 214, consistent with the rules adopted under the *Technology Transitions Order*. Should the Commission not reject this Verizon Notification as

inconsistent with the Commission's current legal requirements, the Commission should at least, pursuant to Section 51.333(c) of the Commission's Rules, extend the time for implementation of the facility retirement and require Verizon to provide appropriate accommodation to ensure Transbeam's EoC customers do not lose service as a result of the proposed retirement. Such action is needed to promote consistency with Commission rules and policies aimed at preserving the benefits of competition, and to ensure that such policies and benefits are not undermined by the network change notification process.

Dated: March 2, 2016

/s/ Andrew M. Klein

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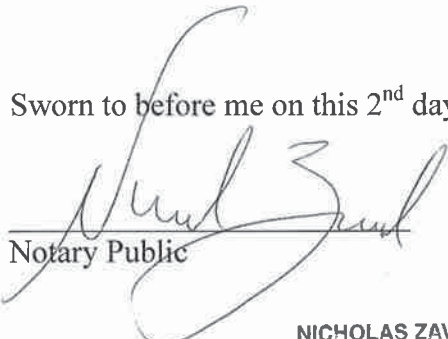
AFFIDAVIT

Marc Sellack CEO

I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of Transbeam Inc., and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection.

Marc Sellack CEO
(name and title)

Sworn to before me on this 2nd day of March, 2016


Notary Public

NICHOLAS ZAVALA
Notary Public, State of New York
No. 01ZA6169899
Qualified in Queens County
Commission Expires July 02, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 2016, a true and correct copy of the foregoing Opposition of Transbeam Inc. to the Copper Retirement Network Change Notification filed by Verizon New York Inc. in Docket No. 16-40/Report No. NCD-2509 was submitted electronically to the Federal Communications Commission and served upon the following:

Frederick E. Moacdieh
Executive Director – Federal Regulatory Affairs
Verizon
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Washington, DC 20005

/s/ Andrew M. Klein
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